

Executed in 6 Counterparts of
which this is Counterpart No. 3.

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INTERSTATE COMMERCE COMMISSION

AGREEMENT

Dated as of May 22, 1975

between

GREENVILLE STEEL CAR COMPANY
Manufacturer

and

PITTSBURGH & LAKE ERIE RAILROAD COMPANY
Railroad

THIS AGREEMENT, dated as of the 22nd day of May, 1975, by and between GREENVILLE STEEL CAR COMPANY, a Pennsylvania corporation ("Manufacturer"), and PITTSBURGH & LAKE ERIE RAILROAD COMPANY, a Delaware corporation ("Railroad");

W I T N E S S E T H T H A T :

WHEREAS, Manufacturer and Railroad have heretofore entered into a Purchase Agreement ("Purchase Agreement No. 1") designated as Railroad's Formal Order dated September 11, 1973, File 53.3.66, under Serial Contract No. 4, Series 1973, under which Manufacturer has agreed to construct and deliver to Railroad at Youngstown, Ohio, with freight charges prepaid, and Railroad has agreed to accept and pay for, 100 100-ton 52'6" Fixed End Gondolas with steel floor, all of which remain to be constructed and delivered (said 100 cars being herein referred to as the "Serial Contract No. 4 Cars"); and

WHEREAS, Manufacturer and Railroad have heretofore entered into another Purchase Agreement ("Purchase Agreement No. 2") designated as Railroad's Formal Order dated October 9, 1973, File 53.3.67, under Serial Contract No. 5, Series 1973, under which Manufacturer has agreed to construct and deliver to Railroad at Youngstown, Ohio, with freight charges prepaid, and Railroad has agreed to accept and pay for 500 100-ton 52'6" Fixed End Gondolas with steel floors, of which 422 have been delivered and invoiced and 78 remain to be constructed and delivered (said 78

*for equipment nos.
see p. 11*

cars being herein called the "Serial Contract No. 5 Cars" and, together with the Serial Contract No. 4 Cars, the "Cars"); and

WHEREAS, inasmuch as Railroad has not as yet consummated financing arrangements for the acquisition of the Cars, it is not in a position to accept delivery of and pay for the Cars under the terms of the Purchase Agreements at this time. Railroad represents that such financing arrangements will be consummated on or before August 15, 1975 (hereinafter referred to as the "Cut-Off Date"). Railroad, in order that it may use the Cars pending completion of the above financing arrangements, has requested Manufacturer to give Railroad temporary custody and possession of the Cars on their completion, solely as a lessee of the Cars, and Manufacturer is willing to do so upon the terms and conditions hereinafter stated;

NOW, THEREFORE, in consideration of the premises and of the promises of the parties herein contained, Manufacturer and Railroad agree as follows:

1. Lease and Rental. Manufacturer will construct the Cars in accordance with the respective Purchase Agreements and the specifications applicable to the Cars and any modification thereof as agreed to between Manufacturer and Railroad (hereinafter sometimes called the "Specifications").

Manufacturer hereby leases to Railroad and Railroad hereby hires from Manufacturer the Cars and each of them for the periods hereinafter set forth. The lease shall be effective as to each Car upon the acceptance of each Car by Railroad as provided in Article 2 hereof, and the lease shall end as to each Car on the earlier of the Cut-Off Date or the date on which Railroad shall make payment to Manufacturer in cash of the purchase price for such Car.

For the use and rental of each Car, Railroad agrees to pay to Manufacturer a sum which is equal to interest on the purchase price of such Car, as defined in Article 12 hereof, for that portion of the year during which the lease of such Car is in effect, at a rate equal to two percent (2%) per annum above the prime rate of interest from time to time charged by Manufacturers National Bank of Detroit, Detroit, Michigan, for ninety-day loans to commercial borrowers of the highest credit standing. If such prime rate changes, the change in rental payable hereunder shall be effective on the day following the day such change in prime rate is announced. Rental for each Car shall commence to accrue on the date the lease thereof commences and shall cease to accrue one day prior to the date of termination of the lease of such Car as hereinabove described. The rental for each Car shall be due and payable to Manufacturer in cash upon the termination date of the lease with respect to each such Car.

2. Acceptance and Delivery. Railroad shall cause each Car to be inspected by a representative of Railroad at Manufacturer's plant in Greenville, Pennsylvania. If such Car is in good order and condition and conforms to the Specifications and to all applicable Interstate Commerce Commission requirements and all applicable requirements of the Association of American Railroads, such representative of Railroad shall execute and deliver to Manufacturer a certificate of acceptance (the "Certificate of Acceptance") certifying to such effect. Such Certificate of Acceptance shall constitute conclusive evidence that such Car was inspected and accepted by Railroad under this Agreement. Manufacturer will thereupon deliver such Car f.o.t. Manufacturer's plant in Greenville, Pennsylvania, freight charges prepaid to Railroad's tracks at Youngstown, Ohio.

3. Title to Cars. Manufacturer shall and hereby does retain the full legal title to and property in each of the Cars notwithstanding the delivery of the Cars to and the possession and use thereof by Railroad as herein provided, subject only to the rights of Railroad under this Agreement.

Upon termination of the lease as to any Cars pursuant to the terms hereof and purchase of such Cars by Railroad, Manufacturer shall by appropriate instrument convey good and marketable title to such Cars to Railroad (or a nominee designated by Railroad) free of all liens and encumbrances by, through or under Manufacturer.

4. Marking. Prior to the delivery of each Car to Railroad it will be numbered with Railroad's Car Numbers as follows:

100 Serial Contract No. 4 Cars . . . 46500-46599, inclusive

78 Serial Contract No. 5 Cars . . . 19922-19999, inclusive

Railroad will, during the lease of the Cars, cause the Cars to be kept numbered and marked with their identifying numbers and marks, and Railroad will not change the number of any of the Cars without first notifying Manufacturer and receiving its approval in writing. In case of any such approved change, the new number shall be set forth in an amendment to this Agreement executed by Manufacturer, and Railroad shall file or record such amendment in each jurisdiction wherein this Agreement is recorded or filed in accordance with Article 11 hereof.

5. Maintenance and Repair. Railroad shall at its own cost and expense maintain and keep the Cars in good order and repair at all times. Manufacturer shall have the right to (but shall be under no obligation to) inspect the Cars and supervise the maintenance thereof.

6. Loss or Destruction. In the event of loss or destruction of or irreparable damage to any of the Cars from any cause whatsoever during the term of this Agreement, Railroad shall promptly and fully inform Manufacturer in regard to such loss, destruction or damage and Railroad shall promptly thereafter pay to Manufacturer all accrued rent for such Car pursuant to Article 1 hereof to the date of such loss, destruction or

damage, together with the purchase price, as defined in Article 12 hereof, of such Car. Upon such payment by Railroad the lease shall terminate as to such Car and Railroad shall be entitled to any material salvageable from such Car.

7. Taxes, Compliance with Laws, Rules and Regulations, and Railroad's Indemnity. Railroad shall promptly pay all taxes (other than income taxes imposed upon Manufacturer), licenses, assessments, fines, charges and penalties on or in respect of the Cars, including but not limited to any taxes which may be imposed upon or in respect of the Cars by reason of or in connection with Railroad's possession or use of the Cars under this Agreement, and Railroad agrees to keep the Cars free and clear of all taxes and assessments. Railroad further agrees that the Cars at all times during the term of this Agreement will be used and operated under and in lawful compliance with all of the laws, rules and regulations to which they may be subject in any local, state or Federal jurisdiction. Any sums of money that may be paid by Manufacturer at its option by way of release, discharge or otherwise, of any of the foregoing, shall be promptly reimbursed and paid to Manufacturer by Railroad on demand as an additional part of the obligation herein with interest thereon at the rate of 9% per annum from the date of payment by Manufacturer.

Notwithstanding the foregoing provisions of this Article, Railroad may withhold any such payment so long as it

shall in good faith and by appropriate legal proceedings be contesting the validity thereof in any reasonable manner and so long as such withholding does not, in the judgment of Manufacturer, affect Manufacturer's title in and to any of the Cars.

Railroad agrees to indemnify and save harmless the Manufacturer from any and all claims, expenses or liabilities, and of all taxes, fines, charges and penalties, of any kind whatsoever, that may accrue or be imposed upon the Cars or Manufacturer because of Manufacturer's ownership or title thereto or because of the use, operation, management or handling of the Cars during the term of this Agreement.

8. Prohibition Against Liens and Encumbrances.

Railroad will pay or satisfy and discharge any and all sums claimed by any person, firm or corporation to be due from Railroad, its successors or assigns, or from any person, firm or corporation using the Cars which, if unpaid, might become a lien or encumbrance upon the Cars; however, Railroad shall not be required to pay or discharge any such claim so long as Railroad is contesting the validity thereof in good faith and by appropriate legal proceedings in any reasonable manner and so long as such non-payment will not affect the title of Manufacturer in and to any of the Cars.

9. Assignments by Manufacturer. All or any of the rights, benefits and advantages of Manufacturer under this Agreement, including the right to receive the purchase price of the Cars, may be assigned by Manufacturer and reassigned by

the assignee at any time and from time to time; provided, however, that no such assignment shall subject any assignee to, or relieve Manufacturer or the successor or successors to its manufacturing property and business from, any of the obligations of Manufacturer to construct and deliver the Cars in accordance with the Purchase Agreements and the Specifications or to respond to its obligations, warranties or indemnities whether contained herein or in the Purchase Agreements or created by law, or relieve Railroad of its obligations to Manufacturer under Article 7 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of Manufacturer's right, title and interest in and to the rights, benefits and advantages of Manufacturer thereby assigned, subject only to such reservations as may be contained in such assignment. From and after the receipt by Railroad of the notification of any such assignment, all payments thereafter to be made by Railroad hereunder shall, to the extent so assigned, be made to the assignee against proper receipt therefor.

In the event of any assignment by Manufacturer of its rights to receive any payments under this Agreement, the rights of such assignee to such payments as may be assigned, together

with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of Manufacturer in respect of the Cars or the manufacture, construction, delivery, guarantee or warranty thereof, or in respect of an indemnity contained in this Agreement, nor subject to any defense, set-off, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by Railroad, its successors or assigns, against Manufacturer, its successors and assigns (other than assignees, as such, of rights, benefits and advantages assigned pursuant to this Agreement). The provisions of this paragraph may be relied upon by any such assignee as a continuing offer by Railroad to waive any remedies which it might otherwise possess for the enforcement of any and all such obligations of Manufacturer as against such assignee, which offer shall be conclusively presumed for all purposes to be accepted by the assignee by payment to Manufacturer of the consideration for the assignment of any of Manufacturer's rights under this Agreement.

10. Assignments by Railroad. Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement nor transfer possession of the Cars to any other firm, person or corporation (except to an affiliated company or as

herein otherwise provided) without first obtaining the written consent of Manufacturer to such sale, assignment or transfer; but Railroad may permit the use of the Cars upon connecting or other railroads in the usual interchange of traffic and upon connecting or other railroads over which through service may from time to time be afforded. It is understood that Railroad may assign all of its right, title and interest under the Purchase Agreements in connection with permanent financing arrangements for the Cars, but any such assignment shall not relieve the Railroad of its obligations thereunder.

11. Recording. Railroad will, at its expense, upon execution and delivery of this Agreement cause the same to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended, and wherever else required in order to publish notice of and to protect the title of Manufacturer to the Cars.

12. Agreement of Railroad to Purchase. In the event that payment to Manufacturer of the purchase price for any Car or Cars has not been made prior to the Cut-Off Date, Railroad agrees to purchase all such Cars and to pay the "purchase price" therefor on the Cut-Off Date. The term "purchase price" as used herein shall mean the base purchase price (set forth below) as increased or decreased pursuant to the following paragraphs.

The base purchase price and the tentative billing price under the Purchase Agreements as escalated to date for each of the Cars is as follows:

<u>Cars</u>	<u>Car Nos.</u>	<u>Base Purchase Price</u>	<u>Tentative Billing Price</u>
100 Serial Contract No. 4 Cars	P&LE Car Nos. 46500-46599	\$19,985.00	\$23,308.92
78 Serial Contract No. 5 Cars	P&LE Car Nos. 19922-19999	\$17,962.50	\$23,672.00

The base purchase price is based upon specifications, freight rates, applicable taxes, Manufacturer's labor costs and other costs in effect at the date of Manufacturer's original proposal (costs of steel, materials and specialties being based on quoted or published prices from Manufacturer's normal sources of supply). The base purchase price (as adjusted to date) is subject to further adjustment as more fully set forth in the Purchase Agreements (Annex A - General Conditions).

In the event of any change or modification hereafter made in the Specifications by agreement between Manufacturer and Railroad, the amount by which such change or modification increases or decreases the cost of the Cars shall be added to or subtracted from the base purchase price (as theretofore adjusted) of the Cars. All other increases or decreases in the base

purchase price shall be by written amendment to this Agreement signed by Manufacturer and Railroad.

13. Default. In the event of any failure at any time on the part of Railroad to substantially comply with any of the terms and conditions contained in Articles 1 through 11 hereof, Railroad, at the election of Manufacturer, which election shall be evidenced by notice thereof in writing given by Manufacturer to Railroad, shall purchase and pay for all of the Cars subject to this Agreement within twenty (20) days after the receipt of such notice by Railroad unless Railroad shall have cured such default within such twenty (20)-day period. Such purchase and payment, except for the date of purchase, shall be made in accordance with the terms and conditions of Article 12 hereof.

In the event of any default by Railroad in respect of any of its obligations under the terms and conditions of this Agreement, and at Manufacturer's election as evidenced by Manufacturer's 20-day prior written notice, the term of this Agreement shall immediately cease and terminate and Manufacturer, without any notice or demand, may take possession of the Cars and, in such event, all of Railroad's right and interest in the Cars will thereupon terminate; provided, however, that such retaking shall not be deemed a waiver of Manufacturer's right to receive from Railroad the full purchase price of the Cars or to receive the benefit of any other rights or remedies conferred upon Manufacturer by this Agreement or by law. In the event of any such retaking by Manufacturer, if Railroad shall thereafter within

twenty (20) days pay to Manufacturer the purchase price, all costs and expenses, including attorneys' fees, incurred by Manufacturer in such retaking, and all accrued rentals for the Cars, and shall make good all of its defaults hereunder, Manufacturer, at the time of such payment and performance, shall redeliver the Cars to Railroad in the condition in which they were when retaken by Manufacturer, ordinary wear and tear excepted, and, by appropriate instrument or instruments, transfer to Railroad title to the Cars, free and clear of all liens and encumbrances by, through or under Manufacturer. In the event that the payment of the full purchase price is not made by Railroad to Manufacturer within twenty (20) days after the date when payment is due hereunder Manufacturer, at its option, may sell, lease or otherwise dispose of the Cars. In that event, Railroad's right and interest in the Cars shall cease and terminate and Railroad's obligation to pay to Manufacturer the full amount of the purchase price, the costs and expenses incurred by Manufacturer in retaking the Cars, and all accrued rental therefor, shall be reduced by an amount equal to the net proceeds of such sale or lease of the Cars, with any excess being paid to Railroad.

14. Payments by Railroad. The payments provided for in this Agreement shall be made by Railroad in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public or private debts.

15. Notice. Any notice hereunder to Railroad shall be deemed to be properly served if mailed to Railroad by certified or registered mail addressed to P&LE Terminal Building, Pittsburgh, Pennsylvania 15219, or to such other address as may have been furnished in writing to Manufacturer by Railroad. Any notice to Manufacturer shall be deemed to be properly served if mailed to Manufacturer by certified or registered mail addressed to Greenville, Pennsylvania 16125, or to such other address as may have been furnished in writing to Railroad by Manufacturer. Any notice hereunder to any assignee of Manufacturer or of Railroad shall be deemed to be properly served if personally delivered to such assignee or mailed to such assignee by certified or registered mail to such address as may have been furnished in writing to Manufacturer or Railroad, as the case may be, by such assignee.

IN WITNESS WHEREOF, Manufacturer and Railroad have caused this Agreement to be executed and their respective seals to be affixed by their duly authorized officers pursuant to lawful authority, all as of the day, month and year first above set forth.

Attest:

L. O. Smith
Assistant Secretary

GREENVILLE STEEL CAR COMPANY

By H. B. Morgan
Vice President

Attest:

G. E. Henschwande
Assistant Secretary

PITTSBURGH & LAKE ERIE RAILROAD
COMPANY

By G. E. Henschwande
Vice President

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF MERCER)

On this 30th day of June, 1975, before me personally appeared F. B. Logan, to me personally known, who being by me duly sworn, says that he is a Vice President of Greenville Steel Car Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Leora Smith
Notary Public

[Notarial Seal]

LEORA SMITH, Notary Public
GREENVILLE, MERCER COUNTY

My Commission Expires: My Commission Expires Feb. 21, 1977.

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF ALLEGHENY)

SS:

On this 8th day of ^{July}~~June~~, 1975, before me personally appeared G. E. NEUENSCHWANDER, to me personally known, who being by me duly sworn, ssys that he is a Vice President of Pittsburgh & Lake Erie Railroad Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Donna R. Smocer
Notary Public

[Notarial Seal]

My Commission Expires:

DONNA R. SMOCER, Notary Public
Pittsburgh, Allegheny Co., Pa.
My Commission Expires
February 3, 1976